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SPEECH  
OF  
PHELPS, OF VERMONT,  
ON THE  
SUBJECT OF SLAVERY &c.

IN SENATE, JANUARY 23, 1850.

The Senate having resumed the consideration of the motion to print the resolutions of the General Assembly of the State of Vermont on the subject of slavery, which were some time since presented by Mr. UPHAM—

MR. PHELPS. After the few remarks which I made the other day, I entertained the hope that I should not find myself under the necessity at present of participating any further in the debate on this question. But, sir, after what has fallen from the other side of this chamber, I feel it due to myself, and due to the State I in part represent, to offer some further remarks in vindication of my course and their course.

Sir, I have been called upon to "face the music." I have no disposition, Mr. President, to avoid the "facing" of any "music;" but I must be allowed to say, sir, that I think we have some very bad "music" on this floor. I have been called upon, sir, to meet the issue. I make no issue here which I am not prepared to meet, and I trust my constituents will make no issue here which I am not prepared to meet. Nay, sir, I am prepared to meet the approaching issue, pregnant as it is with consequences to this country.

Sir, it has been said by gentlemen on the other side of this chamber that this great issue was forced upon them. It has not, however, been forced upon them by the officiousness of any portion of this country; it is an issue which has forced itself upon us; an issue which has come here uninvited and unwelcome. It presents itself as one of that train of consequences which many of us foresaw and resisted. It comes here as the consequence—the necessary consequence—of a train of measures which I, for one, have resisted from the outset. It is one of the fruits of that spirit of aggrandizement, and conquest, and military acquisition, which seems to have infected and infatuated every republican government. Sir, it is one of the fruits of our Mexican war—the fruits of that policy which originated in the disposition to extend the area of our power, but which carries in its train the element which may in the end dissolve this Republic. Sir, I am not surprised at this issue. It is what I have long anticipated; it is an issue which we cannot avoid; and here, sir, lies its difficulty and its danger—it is a question to be settled; but *how* settled no man on this floor can now anticipate.

Sir, in approaching this question, I am not forgetful of the pledge which I gave the Senate on a former occasion, that I should approach it coolly, deliberately, and with a feeling of conciliation; that I should approach it with an ardent attachment to the Constitution and to the Union. Sir, I shall not be diverted from this determination, whatever may be the tenor or the temper of the debate. There are too many considerations of imperious and appalling import now pressing upon me to permit me to depart in the least from what I consider a cool and dispassionate, and rational consideration of this question.

Sir, we are all attached to the Union; we all value the harmony and stability of that Union; and no topic which tends to endanger either, should, in my judgment, be discussed here in anger.

Sir, these professions may be doubted. My professions the other day seem not to have carried with them the most implicit confidence on the part of some gentlemen. Sir, if proof were wanting of the sincerity of my professions on this subject, it is to be found in the history of my public life. There are passages, Mr. President, in that life here which Senators ought not to have forgotten. It is but a few months since, in the position where I now stand, I advocated the measure alluded to by the

honorable Senator from South Carolina. I allude to the territorial bill reported by the select committee, commonly called the Clayton compromise. The honorable Senator from South Carolina, [Mr. BUTLER,] the other day, pronounced that bill satisfactory to the South. His expression was, that it was "framed to save the honor of the South." I sustained that bill; and under what circumstances? Sir, I knew from the outset the position I was about to take, in consenting to be a member of that committee. I knew that it was no enviable, but a perilous position. I knew well the difficulty of reconciling the excited feelings of different sections of this country; I was not ignorant of the danger of any concession, with a view to compromise. I knew, sir, the temper of the people of different sections of this Union, and that every concession, on either side, however small, would be viewed with extreme jealousy. Sir, I might have avoided this position; I might have gone further, and when the bill was reported I might have consulted my own popularity by going with my friends of the North, and following the crowd in denouncing the creature of our own creation. Sir, it was not unanticipated that, in consequence of my course upon that bill, my name should be associated with terms of reproach; that opprobrium, personality, and, sir, I may add, personal insult, should be cast upon me. But, sir, I trust I was influenced by higher and better motives than the mere love of popularity. I had a duty to perform here; I desired to see this troublesome and dangerous question settled; and, in the discharge of that duty, I came boldly to the vindication of that bill, while it was denounced by the almost unanimous voice of the North; and, I may add, by the almost unanimous voice of my own constituency. I stood alone of all the people of the North; I followed the dictates of my own judgment; and, I must be permitted to add, in all sincerity, that judgment is now what it was then.

Sir, I regret that the bill did not pass, and I believe the country will yet regret it. I was willing, if necessary, to make myself a sacrifice in order to attain the great object of harmonizing this Union, and of putting an end forever to the question which now agitates and alarms us. If that object could have been attained by the sacrifice of my humble pretensions, I would have considered the object very cheaply purchased. Sir, when gentlemen from other sections of this Union, when gentlemen from the South, will place themselves in the gap between the excited feelings of their constituents and the harmony of this Union—when they, disregarding the excitement of the moment, will breast themselves to the storm of popular prejudice, hazarding their popularity and their good name with an excited constituency, I promise those gentlemen I will never do them the injustice to doubt the sincerity of their professions.

I will pursue this subject no further. My object is to satisfy the Senate, that in what I have said in relation to the cultivation of a harmonious spirit, whatever professions I have made of a disposition to harmonize the different sections of this Union, and settle forever this troublesome question, my sincerity is proved by the course I have heretofore taken on this floor.

Sir, one object I have in addressing the Senate on the present occasion, is to vindicate the resolutions presented here from the State which I in part represent. Those resolutions have been the object of no very conciliatory comment. Almost every epithet in the whole category of opprobrium has been bestowed on them. Sir, I believe I can vindicate those resolutions before the Senate, and before the world. They have been, sir, misconceived here, and most grossly misrepresented elsewhere. They have been pronounced on this floor offensive, violent, opprobrious, vituperative, unjust, insulting, treasonable, and untrue. Sir, if there is anything left in the category of opprobrium not bestowed upon them, it may well be regarded as surplusage.

Let me advert to the resolutions themselves. I have said that they have been misconstrued. Sir, if they have not been most egregiously misconceived, I have not the capacity to judge. They are drawn not, perhaps, as skilfully as they ought to be. The language is perhaps not precisely what others would have employed to express the same sentiments. I will read them. The first resolution asserts—

"That slavery is a crime against humanity and a sore evil in the body politic, that was excused by the framers of the Federal Constitution as a crime entailed upon the country by their predecessors, and tolerated as a thing of inexorable necessity."

The other day I took the liberty of remarking that the sentiment here expressed was the general sentiment of the civilized world. In making this remark I really regarded it as rather common-place. It seems, however, to have been received as offensive, and was so considered probably because the resolutions themselves were considered to convey an offensive imputation. Sir, when I made the remark, I considered that these resolutions cast no imputation on any portion of this Union. I regarded the resolutions as merely expressing an abstract opinion, directly implicating nobody; and, having this view of their purport, I felt at liberty to endorse them, although if I had regarded the resolution as containing an offensive imputation on any portion of the Union I should probably have avoided the expression. But these resolutions merely express an abstract opinion. What is it? That slavery is a crime, or, if you please, an offence against humanity. Whom does this implicate? Upon whom is censure cast? Upon those, and those only, who participate in the offence and are responsible for the crime, if there be a crime. If criminality is imputed to any one in particular, it is by inference, and by inference only. What, sir, have you, and what have I heard from our childhood on this subject? We have all heard and felt the force of the vindication of the South on this subject. Whatever may be the origin of this institution, its continuance has been vindicated by gentlemen of the South; first, on the ground that they are not responsible for its origin; and, secondly, on the ground that its existence being a matter of inexorable necessity, they are not responsible for that continuance. Sir, this language has been used everywhere. I have not only heard it, but I have used this language myself among my own constituents, in excuse, if you please, or in vindication (if you please to use the term) of the people of the South for their participation in this institution.

I repeat, we all felt the force of this argument. Let the institution be an offence against humanity, if you please; those who brought it into the country are responsible; those who participate in it are responsible for its continuance, only when its abolition can be made consistent with their safety. I have ever felt the force of this argument. And what say the resolutions? They express the opinion that the institution is an offence against humanity. They proceed further to present the vindication which the South have always urged for themselves, the fact that the institution was entailed upon them by those who had gone before them, and that its continuance with them rests upon inexorable necessity. Now, sir, having this view of the resolutions, finding they presented, at the same moment in which they branded the institution as a crime, the excuse in exculpation of the South, I could not regard the sentiment as an imputation upon them. It was with this view that I hazarded the remark which I then considered, and now consider, rather as a common place one, without the slightest idea it could give offence to any one.

But, sir, does the assertion need proof? Does the opinion that the institution is inconsistent with the dictates of humanity need proof?

Sir, what has been the opinion, and what is now the opinion of the civilized world? What has been the language of the ablest and best men of the South? What language have they held before the world, and what has the civilized world at large said and done on this subject? Sir, if we look abroad we find the opinion of the civilized nations of Europe expressed by their acts. Great Britain has put an end to the institution; France demolished it at a single blow. One of the first acts of the French Republic—I speak of the existing Republic—was the abolition of this institution totally, universally, absolutely, without reservation and without qualification, throughout her dominions. Sir, how did we feel, and how did this Senate act, in regard to that matter? Have gentlemen forgotten the resolutions of congratulation, and sympathy, and approbation which were transmitted from this body to France immediately after her late revolution? And have gentlemen forgotten the remark which I thought proper to make on that occasion, when we were expressing our gratification that, among the first acts of the new government with whom we were sympathizing, and to whom we were extending our congratulations, was the absolute and unqualified execution of a measure about which my humble constituents were not even permitted to talk? Yes, sir, the axe was put to the root of the institution. It

was done boldly, promptly, decisively; and yet, at the moment when we were thus expressing our sympathies and extending our congratulations, the subject when presented here from a constituency represented on this floor, was laid upon the table upon the question of reception. Now, sir, I find no fault with that disposition of the subject, so long as it is brought here by the officious fanaticism of people who had better let it alone. So long as it is the mere topic of demagoguism and popular excitement, I care not, if it is presented here in that spirit, if it is put *under* your table. But the subject presents itself now in a different aspect—it comes to us, as I have already remarked, uninvited and unwelcome. It is an intruder upon us; but, even though it is an intruder, it must be received, for we cannot get rid of it. The issue is made in respect to these territories in reference to this institution, and it cannot be evaded. It must be met and it must be decided. Under these circumstances it is the right of every State and of any State in this Union to express its sentiments upon this engrossing subject. It is the right and duty, in this aspect of the question, for every State to express not only its opinion as to the propriety of extending this institution to our territories, but its opinion of the institution itself.

But if I was not right in the remark I dropped the other day with reference to the views and opinions of the civilized world—with the exception, perhaps, of a small portion of it in which the institution exists—if I am in error, let gentlemen point me to some spot in the civilized world where the institution does not now exist, and where a civilized people demand its introduction. Sir, who desires it? When and where, in what portion of the globe, do you find an earnest wish expressed for its introduction where it has not heretofore existed? What is now the sentiment of the people of all these territories? What was the sentiment of Oregon, and what is the sentiment of California? She has presented us here a constitution, in which the people have attempted to prohibit the institution. But, sir, I need not go abroad for material to vindicate my expression; I may appeal to the expressed opinions of the ablest and the best men of the South—the ablest and the best men whom this country has ever produced. What were the opinions of Washington, of Madison, and of Jefferson?

Sir, gentlemen seem to have forgotten the expressive language of these men, when they regard the expression of similar sentiments in these resolutions as offensive to the South. Sir, let me advert to some of the opinions of Thomas Jefferson on this subject, and let me, at the same time, advert to the course of Virginia herself in relation to the introduction of this institution. Mr. Jefferson tells us:

“During the regal Government, we had at one time obtained a law which imposed such a duty on the importation of slaves as amounted nearly to a prohibition, when one inconsiderate assembly, placed under a peculiarity of circumstances, repealed the law. This repeal met a joyful sanction from the then Sovereign, and no devices, no expedients, which could ever after be attempted by subsequent assemblies—and they seldom met without attempting them—could succeed in getting the royal assent to a renewal of the duty. In the very first session held under the Republican Government, the assembly passed a law for the perpetual prohibition of the importation of slaves. This will in some measure stop the increase of this *great political and moral evil*, while the minds of our citizens may be ripened for a complete emancipation of human nature.”—*Notes on Virginia*, pp. 161, 162.

Sir, the sentiments here expressed are the sentiments of this day of the free States, and if an apology be necessary on their part for their expression here, it is to be found in the fact that the language is that of a distinguished statesman and patriot of the South. Mr. Jefferson says further:

“And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are the gift of God? That they are not to be violated but with his wrath? Indeed I tremble for my country when I reflect that God is just; that his justice cannot sleep forever.”—*Same*, p. 360.

Why tremble? If slavery be no sin and no crime, why tremble at the reflection “that God is just.” Sir, this language, when it was uttered, was the language of the patriot and the statesman. It was the language of a man more prominent as a Southern statesman than any other man who ever existed in that quarter of the

Union. But this language, then considered as the language of the philosopher, the patriot, and the statesman, has now become "*fanaticism*." Transplanted from the soil of Virginia to the free soil of the North, these sentiments, which at one time did honor to the head and heart of the author, have now degenerated into "*fanaticism*." This probably is an illustration of what the Senator from Michigan, (Mr. Cass,) calls the progress of the age—of progress in morality and in political ethics. The statements thus uttered in the very heart of the country where this institution exists; uttered by Mr. Jefferson with the approbation of his own country, his own people, and of the world; when repeated by my humble constituency, in less pointed and less vigorous terms, become "*fanaticism*."

What have we done here? What sort of brand has Congress put upon this institution? Sir, at the very outset of our legislation, the subject of the slave-trade was taken up. As early as 1794, although the importation into this country could not then be prohibited under the Constitution, laws were passed against carrying on the foreign slave-trade, with the severest penalties attached to their violation. As early as May, 1800, another act was passed involving the forfeiture of all vessels built and equipped for the purpose, and all persons employed in the business, on board those ships, were made liable to a penalty of \$2,000 and imprisonment for two years. In March, 1807, an act was passed prohibiting the introduction of slaves into the country after the first of January, 1808. The law also provided, that all vessels built and equipped for that purpose should be forfeited, and the penalty on the persons engaged in fitting out such vessels was fixed at a fine of \$20,000. The penalty for the importation of the slaves into the country, was imprisonment for not more than ten nor less than five years, and a fine of not more than \$10,000 nor less than \$1,000. The act of 1818, was a similar one. *In May, 1820, the traffic was pronounced piracy, and punished with death.* Sir, is this traffic, which you denominate piracy and punish with death, to be denominated a crime or not? This resolution assumes that it is a crime. If it is no crime, why pronounce it piracy, and punish it with death? Sir, I am aware that these penalties are directed against the slave-trade, and that it is the *importation* of slaves which has been made the object of these stringent and severe prohibitions; but is not the institution itself a perpetuation of the offence against humanity? It originated at the outset in what you deem piracy, and, however long it may continue, it partakes still of the character of its origin. It is of the blood of its own lineage.

Sir, the present generation may not be responsible for its origin—it may be an evil which they cannot remedy. But, sir, do these considerations render the institution less oppressive, or more consistent with the dictates of humanity?

This is not all, Mr. President. In our treaty with Great Britain, ratified in 1842, we stipulated to employ a force on the coast of Africa for the suppression of this slave trade; and, further, the parties to that treaty engaged to exert their influence with nations still permitting the traffic, to put an end to it by closing their markets. It was thought to be the best mode of discouraging this disgusting traffic to close the markets. What do my constituency now propose? They propose not to open new markets in territories where the institution does not now exist, for the future encouragement of a traffic which the almost entire civilized world has combined to suppress.

Sir, are not the cases parallel? If we are justified in putting an end to this traffic; if we are justified in endeavoring to close the market in other countries, how can we be justified in opening these immense territories, that have been conquered by our valor, as a new market for the introduction of this species of property—a new stimulus to this abominable traffic?

Mr. President, the second resolution has, if possible, been more misconceived than the first. It has been asserted here, and it has been asserted elsewhere, that the second resolution claims a right in Congress to interfere with the institutions of the various States. Sir, the resolution claims no such right. It will bear no such construction. It is only by a substitution of one expression for another, that such a construction can be fixed upon it. What is the language of the resolution?

"That the so-called 'compromise of the Constitution' restrained the Federal Government from interference with slavery only in the States in which it then existed, and from interference with the slave trade only for a limited time, which has long since expired."

Now, it is to be remarked that the word restrained is used in the past tense; it is used in reference to the effect and operation of the Constitution at the time it was adopted. Well, sir, is not the assertion true? If the compromises of the Constitution, which restricted Congress in relation to this subject, restricted them in relation to other territories than the States where it then existed, I desire to be informed where those territories are; for at this time we had but one territory, that of the northwest. The question as to that was settled by the old Congress, existing under the confederation, by a compact which has been regarded from that day to the present as binding upon all. We had no other territory. Where, then, could this restriction take effect, unless it were in the States where the institution existed?

It has been said that this resolution asserts the power in Congress to interfere with slavery in the new States—in the States which have been admitted since the adoption of the Constitution. Sir, I repeat, it asserts no such power. What are those States? First, Kentucky and Tennessee. Sir, we all know that those States were a portion, one of Virginia, and the other of North Carolina. If the restriction operated in Virginia as she stood at the time of the adoption of the Constitution, and upon North Carolina, it covered those territories. So far, then, as new States have been formed out of the limits of the old States, the restriction which applied to the old States will apply to the new, thus formed out of the limits of the old. Then came Alabama and Mississippi, formed mainly within the limits of Georgia. They stand upon the same footing.

But there is another aspect in which this matter is to be viewed. Those who draughted the resolution knew well that, although the proposition in its terms is unquestionably true, that the Constitution only restricted Congress as respects those States where the institution existed, yet the subject was open to be acted upon by Congress in relation to the territories. Our first territory was Louisiana; our second Florida. Now, I maintain that, while these territories remained territories, it was competent for Congress to regulate the subject of slavery within them. However that may be, when those territories became States, the power of regulating the subject passed from Congress. They had no longer any control over it. And thus the new States, introduced since the adoption of the Constitution, have been placed, by virtue of their sovereignty as States, and their exclusive control over the subject, without the pale of our legislation.

Further: the resolutions proceed to state—

"That the powers conferred upon Congress by the Constitution to suppress the slave trade, to regulate commerce between the States, to govern the territories, and to admit new States—powers conferred with an express intention "to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity"—may all rightfully be used so as to prevent the extension of slavery into territory now free, and to abolish slavery and the slave trade wherever either exists under the jurisdiction of Congress."

Now, sir, is not this plain? Can any thing be more so? It asserts the power only in territories subject to the jurisdiction of Congress. I regret, sir, that there has been this mistake. I regret that this error has gone abroad. I have seen some notices of this resolution in the newspapers in which the same mistake occurs. The honorable Senator from Arkansas has been represented as saying that the resolution contains this position, that Congress *is restricted only, &c.*

Now, sir, by substituting the present tense for the past, the resolutions are made to receive a construction which those who drew them up, and those who adopted them, never imagined would be applied to them. Upon this error, Mr. President—upon this misapprehension—have been hung speeches filled with opprobrious epi-



thets, in this Hall, and various comments elsewhere, which I can only characterize as the result, on the part of those who uttered them, of their own hasty misapprehension. If gentlemen had ascertained with more accuracy the purport of the resolutions, they might, and I think probably would, have spared us the comments in which they have indulged. The honorable Senator from Arkansas, after exhibiting to us the resolution as containing the assertion of a power which the resolution does not claim, and, contrasting it with the professions of gentlemen of the North, exclaimed, "Commend me to such conciliation!"—conciliation in professions, accompanied by an assertion on the part of the free States, of a power to interfere with this institution in the slave States of the Union. Sir, if I were to commend the honorable Senator to any thing, I would commend him to the use of his spectacles when he reads the resolution again; and I think he will find that the offensive construction which he puts upon the resolution may very properly be termed a hasty misapprehension of his own. Sir, I disclaim it, as I have done heretofore; I disclaim this imputation upon the resolution. I go further. There is not a man among my constituency, of ordinary intelligence, who does not understand and feel that this institution in the States is beyond the reach of the action of this body; it is universally so considered—universally.

Now, sir, the Senator from Arkansas says he wont argue with us. No, he will not; and for the very best of all reasons—we will not argue with him. We concede the point. We assert no such claim. We have no argument to support a claim which we do not think proper to make.

Sir, what else is there in these resolutions? Why, sir, the residue of these resolutions merely assert the power of Congress to prohibit slavery in these territories; and this, sir, I take it, is not to be regarded as an offensive pretension. It may be ill-founded; but, sir, it is merely the assertion of a power that has been exercised ever since the organization of this Government—a power, exercised in every instance where the exigency of the case called for its exercise. Is it offensive. Mr. President, to assert a power which has thus been exercised by this Government from the beginning? Sir, we may be wrong in this position; the progress of the times, the superior light of the present day, and I might say, perhaps, the superior logic of the present day, may have dispelled the illusion that Congress has the right to legislate for the territories, and we may now be enabled, by abandoning the practice of the Government, abandoning the construction of the Constitution adopted by all the departments of the Government, to place ourselves on a more comfortable footing by setting these territories adrift; for, sir, if the arguments we have recently heard upon this subject of the power of Congress to legislate for these territories be correct—if the logic is sound and the conclusions right—there is but one word in the English language which will describe the position of these territories, and that is the word "*adrift*."

Mr. President, I have done with these resolutions; but there are other matters which demand of me a passing notice. I have heard much, sir, upon this floor, of the encroachments of the North. Sir, I desire to know what those encroachments are. Are they such as would justify any portion of this Union in dissolving its connexion with it, and setting at defiance the Government of this Union? What are those encroachments? When did they commence? How have they been followed up? Sir, the first time that this question ever arose, the first time it was ever proposed to regulate this subject by act of Congress, was with reference to the northwest territory, previous to the passage of the ordinance of 1787. Sir, in the enumeration of these encroachments of the North, we have been reminded of the exclusion of slavery from the northwestern territory, and the peopling of that territory with a population who would "*cling to death their benefactors*."

Now, sir, be it an encroachment or be it not, who was the first man to propose the exclusion of slavery from that territory? The same individual, Mr. President, whose sentiments on this subject I have had occasion to refer to. Thomas Jefferson was the man who first proposed this measure in 1784. In 1787 the ordinance

was adopted; and it was adopted by the unanimous vote of the States, including the States of the South. Now, sir, if this be an encroachment, who is responsible? If it be an encroachment upon the rights of the South, who is the offender? Why, sir, Mr. Jefferson, the original projector, and the representatives of the South in that Congress who sanctioned it by their unanimous vote. Sir, are we of the North to be reproached because slavery is excluded from that territory, when it turns out that the original projector of the measure, and those who adopted it, were the representatives of a slaveholding constituency?

Louisiana came into the Union, and what was done with Louisiana?

Sir, this has been done: We have in that territory three slaveholding States—Louisiana, Arkansas, and Missouri—and but one free State, the State of Iowa. Sir, let me advert to another fact. At the time of the Missouri Compromise there was probably not a slave to be found north of 36° 30'. Well, sir, the result was, that wherever the institution was found, it was permitted by that compromise to exist. So far as this species of property had found its way into the territories, so far it was recognised and protected by this compromise; but, sir, by that same compromise it was excluded north of 36° 30'. Sir, was this an encroachment? Why, sir, it was a compromise in its terms, and a compromise in fact; and will gentlemen assert that a compromise, assented to on all sides, is to be called an encroachment upon the rights of either party? If a compromise of this description is to be converted into an encroachment, I confess I know not what meaning to attach to the expression. The next step, sir, was the introduction of Florida, where slavery was permitted to exist. Was that an encroachment? Texas followed. It was permitted there, too. Oregon followed, and there it was excluded, with the concurrence of southern members, with the approbation of a southern President; and it was excluded from a conviction that, law or no law, the institution never could find its way into that territory. Sir, I think no man will entertain the slightest suspicion that slavery was either desirable in Oregon, or that, if it was permitted to find its own way, it would ever find a foothold there. Was this an encroachment? Was this trampling on the rights of the South? Sir, I don't understand the meaning of such terms.

Then came New Mexico and California. What is the encroachment with respect to them? They have seen fit to abolish the institution, and they come to us with a prohibition in their fundamental law. Now, sir, if we of the North let these people alone, and leave them where their own legislation has seen fit to place them, we can hardly be taxed with encroaching on the rights of the South.

Sir, if the reverse prove true; if the power of this country, once exerted to conquer these territories, is to be exerted again for the purpose of planting amongst them an institution which they repudiate, that would be, in my opinion, a case calling most emphatically for the application of the term encroachment. Sir, a more egregious encroachment on the rights and liberties of any people cannot well be imagined than to attempt to impose upon them an institution offensive to them—an institution which they have in their fundamental law rejected.

Sir, this is a species of encroachment that I protest against. I have listened to many homilies about the innate rights, and the inalienable rights of men, but I have just learned, for the first time, if I understand aright some of the logic we have listened to, that these territories are independent of us; we own the land, but we have no right to control the people. If it be so, I think we are relieved from all responsibility on this subject, if we choose to leave them what they have made them selves, a free people, and do not impose upon them institutions which they have rejected—I might perhaps say, have rejected with horror.

Well, sir, there is another complaint which I deem it my duty to notice. It is said that we have refused to aid in the recapture of fugitives. Sir, is this a violation of the Constitution? I believe it has been settled by the Supreme Court that the free States are under no obligation at all to aid by their State legislation in carrying out this provision of the Constitution. If, then, the Constitution does not

require them to do it, how can they be guilty of a violation of the Constitution, if they refuse to volunteer their aid? It becomes, therefore, a matter of courtesy between the States. If the Constitution requires it, and they do not comply with its requisitions, they are guilty of a violation of that instrument. If it does not require it, how can they be in fault for not discharging a duty which is not imposed upon them? I am aware, Mr. President, that the complaint goes further. It is said not only that the free States have refused their aid, but that they have enacted laws with a view of defeating this provision of the Constitution. Sir, if any laws exist in the legislation of the free States which are designed or calculated to defeat this provision, those laws are clearly unconstitutional. That is a proposition which may be termed a truism. It is not my purpose to defend any such legislation. I leave the authors of such laws, if such laws exist, to their own vindication. I can assent to nothing intended to violate this instrument, so long as we profess to adhere to it, and be governed by it.

Another cause of great complaint is the existence of these "incendiary publications," as they are called. Mr. President, it is the misfortune of our country that we have all a little taste for the "*progress of the age*;" we are all a little ambitious to go ahead, and the country is afflicted with ten thousand visionary theories, based upon the assumption that God in his providence created all things wrong, and that it belongs to the "*progress of the age*" in which *we* live to make all things right. Thus, sir, the institution of slavery is assailed—the Constitution itself is assailed. Why, sir, I have had two or three copies of a paper sent me recently in which there is a form of a petition to Congress to abrogate the Constitution. The church, too, is assailed. There is a sect in my own neighborhood who are determined to pull down the pillars of the church. They have got sick of all religion, and, for aught I know, they will be prepared in the end to disown their God. We have a sect, too, who think all the institutions of society wrong—the domestic institutions all wrong. Man was made, in their opinion, to live as the animals do, and the very best disposition of us all would be to turn us into a sheepfold, as we gather our sheep at the North. Sir, I have as little patience with this philosophy, if you can call it philosophy, as any man in the Union; as little taste for the teachings of these philosophers, who, starting on the principle that their Maker did not understand his business, are working to create all things anew.

Why, sir, these persons are not satisfied with correcting the institutions of the South, they are determined to correct the institutions of the North also. Things at the North are offensive: the very organization of society is offensive; the church of God is offensive; and if these gentlemen could succeed and have their way, we should have, in the fulness of time, the *perfection* of the "*progress of the age*." But what is to be done with these persons? What can you do with them? Sir, it will not do to pass sedition laws. That experiment has been once tried. It is not likely to be repeated soon. What, then, can you do with them? Why, sir, let them philosophize; let them shed the light of their peculiar philosophy the world over; and let the world, in its good sense, judge of it, and dispose of it. We cannot stop it, Mr. President; it would be idle for us to attempt to suppress all the nonsense we have at home, and it would be equally idle to attempt to suppress a great deal of the nonsense that we find abroad. Legislate to cure their wretched theories!—legislate to give men brains enough to understand the folly of it! Why, sir, it is not in the power of human legislation to cure this folly. Nothing short of a creative power can relieve them from the extraordinary mental obliquity by which they are afflicted.

Sir, I am not disposed to justify this kind of folly, but what I would say is, that the gentlemen from the South should not condemn us all. They should not anathematize the whole North because we happen to have some inquisitive geniuses, who, for want of better employment, are disposed to scrutinize the institutions of the South. It is beyond the reach of legislation; it is beyond the reach of political power. It is to be met by reason and good sense; to be combatted in its own element.

With respect to the sentiment, however, that deep, abiding, permanent senti-

ment of the North, that slavery ought not to be extended to these territories, that is a very different thing; it is a more enduring principle. Sir, on that subject our opinions have been expressed—firmly, calmly, and boldly expressed, without equivocation; and all that we propose is to carry out our own opinions, as far as we have the power, by regular, ordinary, constitutional action. If it turns out that we have no constitutional power over the matter, we must yield; but, if we have a constitutional power over it, then, sir, we propose to use it. All we ask is, that the legislation of Congress upon the matter, within its constitutional jurisdiction, shall be guided by the sound judgment of Congress. And, sir, let me protest here, let me protest again, against the idea, or the suggestion, that this subject is pressed upon us by the North. Sir, we all see and feel that it is one of the fruits of this war of conquest; that it presents itself here in a commanding attitude; the question is not to be evaded. Sir, I regret as much as any man to see the countenance of this unwelcome guest here. I would have closed the door against him; I would have closed it by rejecting every thing like acquisition of territory, to be made the subject of dissensions such as are going on now; to be made the arena upon which this issue is to be tried—this disgusting controversy about slavery carried on. But, sir, it is possible that we may be relieved, after all. If it can be made out, that we have no control over these territories; that we are mere proprietors of the land there, and have no control, no legislative power with respect to them; then, sir, I do not see but we can bow this unwelcome visitor out of the chamber.

But, sir, I am disposed to hesitate before I reject the construction of the Constitution adopted by abler, better, and wiser men than I am. Sir, if we possess no power to legislate over these territories, they must be very much in the situation in which the honorable Senator from Georgia (Mr. BERRIEN,) considers his constituents placed by my remark the other day about the civilized world; if we have no control over these territories, they are out of the civilized world, and like the ill-bred Yankee boy, instead of being in a condition of pupilage, as Senators have expressed it, they must come up afoot.

Sir, let me very concisely express my own view in relation to this matter. By treaty with France, Louisiana was ceded to this country; by treaty with Spain, Florida was ceded; by treaty with Mexico, New Mexico and California have been ceded. Now, sir, what is it that was ceded? Is it the mere land? Why, sir, I have yet to learn that they have any public domain; there may be, or there may not. What, then, was ceded to us? The sovereignty of the country. That is the great object of all cession. If the United States had merely purchased a title to land within the jurisdiction of a State, an act of cession would be necessary to give jurisdiction; but if the territory be conquered, and in consequence of such conquest ceded by Mexico, the sovereignty is ceded, and the public domain follows, not as the principal object of cession, but as a mere incident to the transfer of sovereignty. Now, sir, can we take the cession? Have we the constitutional power to accept it? This question was once agitated. It was once proposed to amend the Constitution of the United States, in order to remove doubts as to the constitutionality of the purchase of Louisiana; but the good sense of the American people seemed to approve the measure, and the project of amending the Constitution was abandoned. Sir, we will suppose that we have got over that difficulty—(gentlemen may get over it as they please)—we will assume that it is competent for this Government to take a cession of New Mexico and California, which cession conveys the sovereignty of the country. Now, if we become the depositories of the power, can we or can we not exercise it? If the sovereign control over the country, the highest attribute of sovereignty that can be exercised by any Government, belong to this Government, can the Government or can it not exercise the power with which it is thus clothed? Sir, I derive the power, not directly but indirectly, from the treaty-making power. If the treaty-making power enables us to take a cession of territory which involves the right to control such territory, it would be an absurdity in the science of Government to suppose that we may become the depositories of a power which we cannot exercise.

Now, this may perhaps be deemed "*subtle reasoning*." It may be deemed "*metaphysical*." Sir, it would require a good deal of metaphysics, I think, to get over the utter absurdity in which gentlemen involve themselves when they admit that we can acquire the sovereignty of a country, and yet cannot exercise the rights belonging to that sovereignty.

Sir, in discussing this subject gentlemen overlook the distinction between a mere right of property and the sovereign power of a State. Sir, the cession of a territory or a tract of country, where the ceding power parts with its entire control to a sovereign State, involves political power—the ownership of all belongs to the State. What is that ownership? Not a mere title under the existing law of another Government. It is the highest title known to the law, the eminent domain residing in the sovereignty of the State; and where the ownership is of that character, political regulations and control follow it. The only mode in which that ownership can be exercised is through political action—by legislation.

Sir, we may purchase a tract of land for an arsenal or a fort, and we then get a mere tenancy, in the language of the law; a tenancy in fee simple, under the law and jurisdiction of another State; the mere proprietorship of the land, the mere tenancy, involving no political power; but when our title involves the eminent domain, the very source of all tenancy and all title, then we have the sovereign power to be exercised by political action—by legislation. The ownership in a sovereign State, where there is no other existing jurisdiction, involves political power.

Sir, what is this distinction taken between regulating the land and governing the people? The question is asked, whether a mere cession of land gives political control over a political community within the territory? Certainly a mere purchase of land would not.

But suppose that people have no sort of organization, no political existence, how then are they a political community? They are subject to no control but of this Union, and if we cannot govern the people, what becomes of them? Sir, this must result, that if New Mexico and California are ceded to us by the Mexican Government, their sovereignty is passed to us. If we have got no political control in consequence of such cession, the people must be, as I said before, *adrift*; there is no other phrase that will express their condition. Mexico can have no control over them—they have no political organization. If we have no legislative power over them, they are without law, without government, possessing no political sovereignty of their own, and subject to no jurisdiction. The result, then, of a cession from Mexico, to the United States, is to make those territories independent of both Powers, and place them beyond the reach of legislation and of legal protection. They must, from the necessity of the case, adopt an organization and legislate for themselves; and when they do this, not under our authority, but by force of an inherent right of self-government, they become *ipso facto* independent; and the public domain residing in the sovereignty of the State, as the source of all title, attaches to this new independent sovereignty, and thus our title to the land is extinct.

Sir, by the terms of the Constitution we are authorized to make rules and regulations for the government of the territories. But it is said we can regulate our lands, but we cannot regulate the people. Sir, what kind of regulation would that be? What sort of regulation is that which regulates an inanimate object only, but is binding upon nothing animate—binding the land, but not the people who inhabit it? A law which nothing living is bound to regard!

If you make regulations with respect to your land, you must regulate the mode of acquiring title and the mode of transferring title. You must have some law in relation to these matters, for you can have no title as mere owner of the land without some law to support it. Your law must regulate the people living upon the land. If disputes arise between you and some of your tenants, you must have some law to regulate those disputes, and you must have some tribunal to decide them; you must also have some executive power to carry those decisions into effect. I know not how you are to administer law in a region where there is no law and no tribunals for adjudication, and no executive officers to enforce decrees. Without

these agencies any regulations that you may make are nugatory and useless, and your acquisition of territory is valueless. You cannot control your land unless you have legislation, nor unless you have executive and judicial authority somewhere. Well, sir, when you have these three branches, you then have the outline at least of a political government. It is impossible to proceed one step to any practical purpose, in my judgment, in regulating the territories, unless you have not only the form but the essentials of government. When you have established regulations for the acquisition and transfer of titles, you have entered upon legislation. When you have created an executive and a judiciary, you have assumed political power. Where, then, is the limitation which ties you down to any particular subject or particular course of legislation? Is there any limit to your power, but the limit of legitimate legislation and sound legislative discretion? Sir, is it not clear that the power to make rules and regulations respecting the territory of the United States carries with it legislative—political power? And is it not further apparent that without that accompaniment the power conferred by the Constitution is impotent?

Sir, I am not disposed to occupy the time of the Senate upon this point. I have had occasion heretofore to express my views more formally, more at large, in regard to it, and I am not now about to repeat them; but I wish to ask some questions, rather for the purpose of information. It is said that we can regulate the land—the territory (for “territory means land”)—but that we cannot regulate the people upon it. Now, the very first step is to have the land surveyed and offered for sale. It is sold. The Government issues its patent. The patentee goes on and takes possession of the land, and the moment he takes possession, he becomes independent of your Government! He is a sovereign by himself! He is, by himself, a “*political community!*” [A laugh.] He sets you at defiance, and takes as much land as he pleases. Well, what are you to do? Are you to drive him out at the point of the bayonet? But suppose you grant another patent of the adjoining land to somebody else who has got no bayonet, and a controversy arises between those two men, what is to be done? Why, I suppose they must fight it out; because, although you have the sovereignty of the country and you own the territory, you have no constitutional power to interfere in the controversy, and you must therefore make your obeisance to these two individuals, holding under your own patent, in the character of mediator between these two hostile “*communities.*” Sir, I will not follow the subject any further. I suppose, Mr. President, the provisions contained in our Constitution were intended to be practically sufficient to answer some purpose. I suppose they were intended to answer the great purpose of government; but if our powers with respect to these territories are such as gentlemen suppose, and such modes of construction are to be adopted, all I have to say is, the whole Constitution put together is not worth the controversy which has grown out of it.

I had designed, sir, to allude to another subject, and I feel bound in some measure to do so. Sir, it is by no means extraordinary that the discussion of this subject of slavery should produce excitement. It is by no means strange if that excitement should be carried to an extreme, and it is from this consideration—that men, under the influence of an excitement produced by a state of affairs like this, will sometimes do what in their cooler moments they would have avoided—that my fears arise. This lies at the bottom of my apprehension in relation to this matter.

Sir, we have heard much of the purposes and the determination of the people of the South. To what point that determination tends, what that determination precisely is, how far it reaches in its design and purpose, is not for me to say. I hope and trust that it reaches no further than is consistent with the rational and constitutional protection of their own rights, or such rights, at most, as they suppose themselves to possess. If this determination, Mr. President, goes no further than to sustain their integrity as States, to maintain their exclusive jurisdiction over their own domestic affairs, nobody has the right to interpose; no one has a disposition to do so. Sir, the determination of the South in regard to this matter, if it goes no further than to preserve the honor of the South, and to secure what is due to her

domestic institutions, is right. She has a right, boldly and firmly, to maintain these against all encroachment, and I assure the gentlemen of the South that she will have no difficulty in doing this; there will be no obstruction thrown in her way by the North; no invasion of rights in this respect need be apprehended; no interference. I am willing to engage, sir, that she shall be undisturbed in the administration of her internal affairs, throughout the whole extent of her domain. She may line her whole frontier, from the Atlantic to the Mississippi, with bayonets; it will be a bloodless warfare; she will have no enemy to contend with. I have no apprehension on this score. The difficulty and the danger lies beyond this.

Sir, before we suffer ourselves to be excited or alarmed, it is well, perhaps, to ascertain in what position we stand, to ascertain what is the issue between us, what are its probable and what its possible results. Sir, we have no contest with the gentlemen of the South about the institution of slavery, as it exists in the States. What is, then, the controversy? Sir, on the one side we maintain the power of Congress to regulate the subject within the territories while they remain such. This power is denied, at least to a certain extent. Here, then, is the issue. Does it not result in a question of constitutional construction? I have had occasion to discuss this question heretofore with distinguished gentlemen of the South. We understood ourselves as discussing a constitutional question. What are our powers under the Constitution? Can we or can we not put our hands upon the institution within the territories, and is it or is it not subject to our control? Sir, if it is, as I conceive it to be, a mere constitutional question, it is not a matter to be settled by violence. It is a matter to be discussed coolly and calmly.

Such being the character of the issue between us, whatever determination may exist here or elsewhere, and however firmly and earnestly the issue may be maintained by the respective parties to it, yet gentlemen will permit me to say, that all threats and violence, all purposes of disunion, of separate independent State action, and any and all measures not justified nor called for by the Constitution, are in my judgment, at present altogether premature. Sir, Congress has not yet attempted to exercise the power in this instance—that is, in relation to the newly acquired territories. Before we talk of dissolving the Union, let us wait and see whether Congress will exercise it. If, sir, it should turn out that the Wilmot proviso, or the Ordinance of 1787, cannot be passed through Congress, the South will be satisfied, and we certainly shall not attempt to carry either into execution by force. But, sir, suppose Congress should enact the Wilmot Proviso, or suppose we should incorporate the Ordinance of '87 into an act establishing territorial governments, has the time then arrived for disunion—for resistance to the Constitution? Has the time then arrived for independent State action, or any extreme measures not warranted by the Constitution itself?

Mr. Foor. It would be usurpation.

Mr. PHELPS. The Senator may call it "usurpation," if he pleases. But I repeat the question, suppose the Wilmot Proviso should pass? Has the time arrived for a separate, independent State action, by way of resistance, to the action of Congress, call it usurpation, or what you please? No, sir; *not yet*. The Constitution has provided its remedy; the framers of that instrument, foreseeing that there might be a difference of opinion in defining precisely the powers conferred by it, have provided a peaceful tribunal for the adjustment of such controversies—that tribunal which sits in the chamber below us, Mr. President, (the Supreme Court.) It is for them to pass on the validity of these ordinances.

Sir, we were told yesterday that we had nothing to do with their decision; that we are to follow our own opinion, without regard to their adjudications, and are to be guided solely by our own judgment. All this may be true to a certain extent. In giving our votes here, we are guided by the dictates of our own judgments, and we form our own opinions of what is constitutional and what is not; but, sir, when a law comes to be enacted, and the question whether that law is constitutional or not is raised, the decision of that tribunal, whether it is or is not constitutional, binds the Government, and decides the Executive whether to put the law in force or not. If the decision is adverse to the law, the law itself is abrogated, virtually and in

effect, by the decision of this tribunal. Sir, is not the path before us plain? When the judgment of this body and of the other House is passed upon this subject, and the Wilnot Proviso is adopted, if the constitutionality of the enactment is doubted, here is a constitutional tribunal to settle the question.

Now, sir, will or will not the North and South both submit to its decision? Will either party attempt to decide on the constitutionality of the law in anticipation of the decision of this tribunal, and set that decision at defiance? Sir, I repeat, that even when these measures, offensive as they may be regarded in some quarters, are passed here, the time for resistance in any other shape than in following out the remedies provided by the Constitution has not yet arrived. When the decision of that tribunal is pronounced, should it establish the power for which we at the North contend, it will then be fully in season; early enough for the gentlemen of the South to begin to calculate the value of the Union, and determine whether they can any longer live under it, as expounded by the various departments of the Government. Sir, we have many stages to pass through yet; many contingencies to encounter, before we begin to talk of breaking up the foundations of our political temple.

Mr. President, I alluded, in the commencement of my remarks, to a measure that was brought before this body some months ago—a measure which was in my judgment the only one which could be resorted to with the slightest hope at that time of an adjustment of this question. Sir, I am free to say I was disappointed in some respects in finding gentlemen of the South giving their assent to that proposition in a manner that appeared to me hardly consistent with their professed opinions. Sir, I give the gentlemen credit for yielding their assent to that measure with a view of conciliation and settlement. This very question presented itself to us when we had under consideration that bill. There lay under it, after all, the constitutional question, whether you can regulate the subject at all. We were all conscious of that. The friends of the bill, one and all, were willing to submit that constitutional question to the proper tribunal. We did not attempt to settle it, but professed on all sides a willingness to submit the question to the tribunal created by the Constitution for the purpose of deciding it. Has there been any change of sentiment on this point? Are we not prepared now to submit it? Certainly, sir.

Mr. YULEE. Do I understand the gentleman to say that the North is prepared now to submit the question to that tribunal?

Mr. PHILIPS. I cannot be responsible for the entire North; but what I mean to say is, I trust that all parties are willing at the present day, before resorting to measures not sanctioned by the Constitution, to submit the constitutional question, in the first instance at least, to the tribunal created for the purpose of deciding it. Sir, when a decision is had, the question will assume a very different aspect. Sir, I do not like to anticipate, but I venture to assert that the great mass of the American people will sit down satisfied with the decision of that tribunal upon this question, let that decision be as it may.

Mr. YULEE. Will the Senator yield me the floor for one minute? I desire that Senators from the North should be tested upon this point. The gentleman says that the North is contented that the issue of this question between the two sections of the country should rest upon the decision of the Supreme Court as to the constitutional merits of the issue. Now, sir, I ask him whether he speaks for the North, when he says the North is willing to come forward and meet the South upon this settlement of the issue. I hazard nothing in saying that the South is prepared now, conscious as she is that she demands only her constitutional rights, to submit the question to the Supreme Court, and to hold all action and all legislation which may affect it in abeyance until that decision shall be had.

Mr. BUTLER. I am bound to interfere in this matter, because the question put by the Senator from Florida should not go without some explanation. At the time the bill relating to the territories was under consideration more than a year ago, the South would have had an opportunity to have settled this territorial question, and during that time must have had some rights within those territories secured to her by Congress; but I do not go so far as my friend from Florida in saying that I would altogether acquiesce in the proposition to subject the rights of fourteen sovereign States to the decision of a body like the Supreme Court of the United States, after all the advantages given to our opponents by the operations of the Government in California and New Mexico.

Mr. FOOTE. If the honorable Senator will allow me to interpose at this point of his argument, I will be obliged to read an extract from the famous report of Mr. Madison, explanatory and vindictory of the celebrated Virginia resolutions of 1798-99. It will be recollected that it was contended then, as now, by certain statesmen, that the action of Virginia, Kentucky, and certain other States, had been precipitate and unjustifiable, in striving, in the mode then adopted, to arrest the course of unconstitutional legislation on the part of Congress, and that the Supreme Court of the Union ought alone to be appealed to. I refer to Mr. Madison, who, as a lover of the Union, and a faithful expositor of the Constitution, he never could be appealed to.

“The deliberate exercise of American anarchy, palpably withheld by the Constitution, could not jus-



tify the parties to it in interposing even so far as to arrest the progress of: *ne evil*, and thereby to preserve the Constitution itself, as well as to provide for the safety of the parties to it, there would be an end to all relief from usurped power, and a direct subversion of the rights specified or recognised under all the State constitutions, as well as a plain denial of the fundamental principle on which our independence itself was declared.

"But it is objected that the judicial authority is to be regarded as the sole expositor of the Constitution in the last resort; and it may be asked for what reason the declaration by the General Assembly, supposing it to be theoretically true, could be required at the present day, and in so solemn a manner.

"On this objection it might be observed, first, that there may be instances of usurped power which the forms of the Constitution would never draw within the control of the judicial department; secondly, that, if the decision of Judiciary be raised above the authority of the sovereign parties to the Constitution, the decision of the other department, not carried by the forms of the Constitution before the Judiciary, must be equally authoritative and final with the decisions of that department. But the proper answer to the objection is, that the resolution of the General Assembly relates to those great and extraordinary cases in which all the forms of the Constitution may prove ineffectual against infractions dangerous to the essential rights of the parties to it. The resolution supposes that dangerous powers, not delegated, may not only be usurped and executed by the other departments, but that the judicial department also may exercise or sanction dangerous powers beyond the grant of the Constitution; and, consequently, that the ultimate right of the parties to the Constitution to judge whether the compact has been dangerously violated, must extend to violations by one delegated authority as well as by another—by the Judiciary as well as by the executive or the legislature.

"However true, therefore, it may be that the judicial department is, in all questions submitted to it by the forms of the Constitution, to decide in the last resort, this resort must necessarily be deemed the last in relation to the authorities of the other departments of the Government; not in relation to the rights of the parties to the constitutional compact, from which the judicial as well the other departments hold their delegated trusts. On any other hypothesis, the delegation of judicial power would annul the authority delegating it; and the concurrence of this department with the others in usurped powers might subvert forever, and beyond the possible reach of any rightful remedy, the very Constitution which all were instituted to preserve."

Mr. PHELPS. Mr. President, I apprehend there is nothing in the extract which has been read which bears on the course of remark which I was pursuing. What I intended to illustrate was this: should this law, offensive to the people of the South, receive the sanction of Congress, there is still a constitutional tribunal to which they may appeal for the interpretation of the Constitution, and for the purpose of determining whether this body has transcended its powers or not. Well, sir, if that decision should be against the validity of the law, most clearly the South would be satisfied; we should have no civil war growing out of such a decision. Should the decision be otherwise, and the power of Congress in this particular be established, it will then, as I remarked before, rest with the sovereign States of this Union to determine whether they can longer adhere to the Constitution thus expounded by the Judiciary department of the Government. The extract from the writings of Mr. Madison asserts the ground that these sovereign States may, after all, judge for themselves. Certainly they may. They must be their own judges whether they will longer continue in our political community. I have expressed no doubt on this point. The idea I intended to convey was this: that it will be abundantly in season for the southern States to take this matter into consideration when they have exhausted their constitutional remedies.

Mr. FOOTE. The honorable Senator will pardon me for suggesting that he has most evidently mistaken the character of the crisis of 1793, and has especially misconceived the main object of those resolutions. Secession was not then looked to, mainly at least, but the *arrest of unconstitutional legislation by constitutional remedies*, whilst the Union should continue.

Mr. PHELPS. Certainly, certainly; I have no objection to any constitutional mode of operating on the action of Congress. My remark is not directed to any constitutional mode, but the remark was, and I repeat it, let the constitutional modes be exhausted before separate, independent, State action shall be resorted to, not called for and not warranted by the Constitution. Sir, my object in alluding to this was to show gentlemen that much of the excitement which seems to have prevailed on this subject is, in my judgment, premature. If we differ on this important point, let us debate it among ourselves till we can settle it for ourselves. If the question is still regarded as unsettled, let the constitutional tribunals pass upon it. When they have settled the construction of the Constitution, if any of the States of this Union shall feel that that tribunal has proved recreant to its great trust, and has combined with the other departments of the Government to pervert the Constitution, then the time may have arrived when new and different modes of redress must be resorted to. Sir, I hope and trust we never shall arrive at that point. In my humble judgment, we never shall come to it; for, with the good sense, the patriotism, and devotion to the Union which pervades, I believe, the whole American people, that good sense will, in my judgment, arrest the course of violence and faction long before it reaches that extreme.

Sir, I was remarking that, upon the occasion of the presentation of the bill alluded to before the Senate, there seemed to be on all sides, a perfect willingness to submit the question, about which we differ, to the constitutional tribunal. I am not authorized to say if that bill had been passed, and the matter had been referred to the Supreme Court for its adjudication, and the decision of that tribunal had been adverse to the pretensions of the South: it does not become me to say what would have been their future course; but, sir, I desire to know whether there is not, at this moment, the same readiness to try, in the first instance, at least, the constitutional remedy, before other and more extreme measures should be adopted? Sir, that was, in my judgment, the correct method. That bill, if it had been properly understood, would have been satisfactory to the entire people of the Union: but, it was un-

fortunate y the victim of demagoguism—the expression is perhaps a harsh one—it was unfortunately the victim of mis-representation and misrepresentation on the part of some whose policy it was to keep up the excitement. The people of the North were made to believe it involved an abandonment of their pretensions, when, in reality, so far as the powers of Congress could go, it was precisely the reverse. Its only redeeming feature in the estimation of those gentlemen of the South who concurred in the report of the committee was the very fact that under all the legislative hypotheses this constitutional question. Then there was a ground upon which they were willing to rest their claims. That bill has been called a compromise. It was such in one aspect only. It needed the legislative action to the North, while it reserved to the South the constitutional question upon which the validity of that action depended.

Sir, I will trouble the Senate for a very few moments longer. I am reluctant to follow this subject further; but, having, and what I have, I may perhaps be excused for looking a little further into the future. Sir, if, through the instrumentality of separate independent State action, the operations of this Government are to be suspended, it may be well to inquire what then will be the position in which we shall find ourselves. Sir, if there is to be a secession from this Union on the part of the South—which I hope will never be the case—but if there should be, what then becomes of this purpose of carrying the institution of slavery into the territories? By any such secession, the territories will be left the property of the remaining portion of the Union. The South, by abandoning the Union, will abandon their interest in these territories, and their control over them. Such, upon ordinary principles, will be the result. Well, sir, what then becomes of the project of extending slavery into the territories; the great object for which gentlemen seem willing to hazard so much? Sir, there will be but one way—there will be but one mode of carrying it out, and that mode will be *by conquest*—a conquest of those territories from the power of those States which still adhere to the Union.

Sir, if measures of this kind are resorted to for the purpose of extending the institution of slavery, or if they are persisted in, I think of no possible result but civil war, in order to obtain the conquest of the territories from the free States.

Sir, I will pursue this subject no further; the suggestion that such may be the issue is enough of itself. If the possibility of such a course is not of itself sufficient to excite reflection and induce caution, all the powers of language cannot add one feather's weight to its force.

Mr. President, I have already detained the Senate too long, but having been called upon to meet the subject here, I thought it my duty to meet it boldly, and at the same time temperately. I deprecate all exciting debate on the subject. I am disposed to view it more coolly as the subject rises in importance. Sir, I would sooner quarrel about a trifle than I would yield to excitement in regard to a topic which, of all others, seems most to endanger the harmony, and perhaps the stability, of this Union. I meet it boldly, because the sentiments expressed in the resolutions of my own State, however they may differ from the sentiments prevailing elsewhere, are those which my constituency entertain, and which my own State, as a member of this Union, has a perfect right to entertain and to express. They are sentiments bearing directly on the action of this body, on the most important subject before it, and perhaps upon the most important topic that will ever come before it. Upon such a question it is the right of any and every State of this Union to express itself in language satisfactory to itself.

Sir, I regret that Senators should have thought it proper, in reference to my colleague (Mr. UPHAM) and myself, to charge upon us the unnecessary exhibition of these sentiments—the unnecessary and culpable agitation of the subject here. Sir, the right of my State, and of any State in this Union, to speak its sentiments in this manner, should not be—is not questioned. The only manner in which a State can speak here is through her representatives on this floor. Will it be contended that, if such expressions should happen not to be palatable to every gentleman on this floor, that, in regard to a topic thus important, it is the duty of the representative to pocket the solemn resolutions of his constituency, and suppress their opinions?

Sir, in presenting these resolutions my colleague conformed to the uniform practice of the Senate; and I was not a little surprised that exception should be taken to this course, after listening to the expressions of gentlemen from other quarters, in relation to the determination of the States they represent. Sir, it is the right, it is the duty of these gentlemen, to express the opinions of the States they represent. I take no exception to the very decided tone in which, in some instances, this has been done. But I may be permitted to express my surprise that, while gentlemen volunteer, upon their own responsibility, not only to express the opinion of their States, but to announce determinations—fixed and unalterable purposes—which may lead to measures of the last extremity, we should be censured for presenting the expression of opinion emanating from the Legislature—the representation of the people of our State.

Mr. President, I repeat it, this subject is one which, of all others, I would avoid, if I could avoid it consistently with my duty. But the time has come when it cannot be avoided. My apology, if one be necessary, for trespassing upon the time of the Senate, is to be found in the fact, that the opinions expressed by the Legislature of my State have been commented upon in a tone and with a severity which rendered it my duty, as the representative of the State, to vindicate those opinions, and those who expressed them.

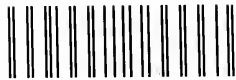
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